UNITED MALAYAN BANKING CORPORATION BHD. v. PEMUNGUT HASIL TANAH, KOTA TINGGI
JOHORE SUGAR PLANTATIONS AND INDUSTRIES BHD. v. PEMUNGUT HASIL TANAH, KOTA TINGGI

[O.C.J. (Gill C.J.) March 6, 1979]

[Johore Bahru — Originating Motions Nos: 42 and 43 of 1977]

Land Law — Forfeiture of land for non-payment of quit rent — Appeal against forfeiture — Person aggrieved — Whether equitable principles applicable — Civil Law Act, 1956, s. 3(1) — National Land Code, ss. 100, 133, 134, 134(2), 237, 418.

English Law — Application of equitable principles — Relief against forfeiture — Civil Law Act, 1956, s. 3(1).

In this case the Johore Sugar Plantations and Industries Bhd. was the registered lessee of a piece of land in Kota Tinggi for a term of 99 years from December 22, 1966. The Company developed the land and constructed a sugar refining factory on it. For this purpose it had borrowed money from the United Malayan Banking Corporation Bhd. and the total amount owing was $5,334,163. Quit rent in respect of the lease, was regularly paid till 1976 but the quit rent for 1977 was not paid. The result was that the Collector of Land Revenue proceeded to declare the land forfeit to the state. The Bank and the Company thereupon filed motions to have the order of forfeiture set aside.

Held: (1) in dealing with an appeal under section 418 of the National Land Codes the court in the exercise of its inherent equitable jurisdiction has the power to grant relief against the forfeiture;

(2) in all the circumstances of this case the court should exercise its discretion in favour of the applicants by granting the relief sought.

Cases referred to:-

(1) *Attorney-General of Gambia* v. *N'jie* [1961] A.C. 617, 634.
(2) *Collector of Land Revenue Johore Bahru* v. *The South Malaysia Industries Berhad* [1978] 1 M.L.J. 130, 134.
(3) *Devi* v. *Francis* [1969] 2 M.L.J. 169.
(4) *Temenggong Securities Ltd. & Anor.* v. *Registrar of Titles, Johore & Ors.* [1974] 2 M.L.J. 45.
(5) *Registrar of Titles, Johore* v. *Temenggong Securities Ltd.* [1976] 2 M.L.J. 44.
(6) *Butler* v. *Fairclough* (1916-17) 23 C.L.R. 78, 91.
(7) *Abigail* v. *Lapin* [1934] A.C. 491.
(8) *Wilkins & Ors.* v. *Kannammal & Anor.* [1951] M.L.J. 99, 100.
(9) *Re Dixon Haynes* v. *Dixon* [1900] 2 Ch. 561, 576.
(10) *Chandless-Chandless* v. *Nicholson* [1942] 2 K.B. 321, 323.
(11) *Barton Thompson & Co. Ltd.* v. *Stapling Machines* [1966] 1 Ch. 499.
(12) *Shiloh Spinners Ltd.* v. *Harding* [1973] 1 All E.R. 90, 100.
(13) *Peachy* v. *Duke of Somerset* (1721) 1 Stra. 447; 93 E.R. 626.
(14) *Hill* v. *Barelay* (1811) 18 Ves. 56; [1803-13] All E.R. Rep. 379; 34 E.R. 238.
(15) *Reynolds* v. *Pitt* (1812) 19 Ves. 134; 34 E.R. 468.

ORIGINATING MOTION.

Wong Kim Fatt for applicant in O.M. No. 42/77.

N.H. Chan for applicant in O.M. No. 43/77.

Nik Mohamed bin Nik Yahya for the respondent.

Gill C.J.: Johore Sugar Plantations & Industries Berhad, a company incorporated in Malaysia, was the registered lessee of all that piece of land held under qualified Title No. Q.T.R. 156 for Lot M.L.O. 1481(A) comprising an area of approximately 20,680 acres or thereabouts in the Mukim of Ulu Sungei Johor in the District of Kota Tinggi for a term of 99 years commencing on December 22, 1966. The original capital of the Company was $36,682,000 but it has since been reduced to $7,336,400.

The United Malayan Banking Corporation Berhad lent money to the Company under three separate charges to assist in the development of the land, the construction of a sugar refining factory, the purchase and acquisition of necessary machinery and equipment for the purpose of harvesting of canes for the refining of sugar and generally to provide additional capital for the chargor for the daily expenses and management of the whole complex. The total amount of money owing under the said charge or charges was $5,334,163.60 as on September 26, 1977.

Quit rent in respect of the lease was paid regularly up to the year 1976. In the year 1977 when the rent fell in arrear the Collector of Land Revenue caused to be served on the Company a notice of demand for the rent in Form 6A under section 97(1) of the National Land Code. A copy of such notice, as required by section 98(1) of the Code, was also sent to the Bank. Presumably the Bank had paid the quit rent during the previous years. This time, however, the Company did not specifically refer the matter of payment to the Bank, and the Bank believed that the quit rent had been paid by the Company. All this confusion led to the quit rent not being paid in time. The result was that the Collector of Land Revenue proceeded under section 100 of the Code to declare the land forfeit to the State Authority. Such forfeiture was gazetted in the Johore *Gazette* dated September 15, 1977 as Notification No. 1136.

The Bank and the Company have now filed two separate motions in the High Court at Johore to have the order of forfeiture set aside, the originating motion by the Bank being No. 42 of 1977 and the one by the Company being No. 43 of 1977. By consent of the parties the two applications were heard together, as the points involved in and the object of each of the applications are the same.

In answer to the objection taken by the Collector of Land Revenue as respondent to each of the originating motions that the procedure adopted by the applicants was wrong, it was contended on behalf of the applicants that the proceedings were brought by way of appeal under sections 134(1) and 418 of the National Land Code. It was further contended that the point at issue was whether the court has jurisdiction to grant relief against forfeiture and, if so, whether this is a proper case for the court to exercise its discretion to grant such relief by setting aside the order of forfeiture made by the Collector.

One of the grounds in support of the motions is that the validity of any forfeiture order may be challenged in court by way of an appeal under section 418 brought by a person aggrieved, as that section confers on the court the power to make such order as it considers just. In this connection it was argued that a wide and liberal interpretation should be given to this section so as not to fetter the jurisdiction and discre-

tion to the court. It was further argued that the Bank as the registered chargee was undoubtedly a person or body aggrieved by the forfeiture as such forfeiture directly affected its security and right under the charge. In support of this argument was cited the case of *Attorney-General of Gambia* v. *N'jie*[1] in which Lord Denning said:

"The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him: but they do include a person who has a genuine *grievance* because an order has been made which prejudically affects his interests."

Another ground in support of the appeal is that the notice issued on the applicants was invalid in that the sum alleged to be due by way of quit rent was not correctly stated and was in fact in excess of the amount lawfully due. An effective answer to this ground is to be found in section 124(2) of the Code which says that no order of forfeiture shall be set aside by reason only of any irregularity in the form or service of any notice unless, in the opinion of the court, the irregularity was of a significant nature. The only irregularity alleged here was that the amount demanded was some $6,000 more than the amount lawfully due. I do not think that was an irregularity of any significant nature, especially in view of the fact that no representations were made to the Collector as to the amount demanded by way of quit rent.

It is common ground that the Collector has power under section 97 of the Code to cause to be served on the proprietor of the lease a notice of demand in Form 6A. It is also clear that under section 100 of the Code the Collector has the authority by order to declare the land forfeit to the State Authority in the event of failure on the part of the proprietor to tender to him the amount stipulated in the notice within the specified time.

The remedies open to the lessee thereafter are contained in sections 133 and 134 of the Code. Section 133 of the Code provides as follows:

"(1) Any person or body who was the proprietor of any alienated land immediately before its forfeiture under this Act may at any time apply to the State Authority for the annulment of the forfeiture.

(2) The State Authority may in its absolute discretion refuse or allow any petition under this section, and, if it allows the petition, may do so conditionally upon payment by the petitioner —

(a) if the forfeiture was for non-payment of rent, of such penalty, not exceeding six times the sum which he was required to pay by the notice of demand served on him under section 97, as the State Authority may think fit to impose;

(b) if the forfeiture was for breach of any condition, of such amount as the State Authority may determine in respect of the expenses occasioned by the forfeiture.

(3) The refusal of any petition under this section shall not be taken to prejudice the power of the State Authority to re-alienate the land to the previous proprietor at any time; and, for the purposes of any such re-alienation, the State Authority shall, at the time when it gives approval thereto, re-determine as it may consider appropriate the various matters specified in sub-section (2) of section 79."

Section 134(1) of the Code provides as follows:

"(1) The validity of any forfeiture under this Act shall not be challenged in any court except by means of, or in proceedings consequent upon, an appeal under section 418 against the order of the Collector under section 100 or, as the case may be, 129; and, notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said section 418."

It would thus seem clear that after the forfeiture order has taken effect under section 131 of the Code the proprietor of the land immediately before the forfeiture has two courses open to him. First, he can petition the State Authority under section 133(2)(a) of the Code for the annulment of the forfeiture and the State Authority may, in its discretion, allow his petition conditional upon the making of such payments as may be required of him. Furthermore, as provided by section 133(3), the refusal of any petition for the annulment of the forfeiture shall not be taken to prejudice the power of the State Authority to re-alienate the land to the previous proprietor at any time.

It was conceded by counsel for the respondent that in this case an application was made by the Company on November 17, 1977 for the annulment of the forfeiture. The application, however, was refused by the Authority by its letter dated December 28, 1977. Even after the refusal of this petition by the State Authority it was open to the Company to apply to the Authority for realienation of the land. The Company obviously chose not to do so because the conditions of realienation under section 133(3) are as stringent as the conditions for annulment of the forfeiture under section 133(2). It is for this reason that the Company has chosen the second course open to it under section 134(1) of the Land Code read in conjunction with section 418 of the Code.

I would pause here to observe that section 237 of the Code makes specific provision for the granting by the court of relief against forfeiture. But, as Raja Azlan Shah F.J. said in the Federal Court in *The Collector of Land Revenue Johore Bahru* v. *The South Malaysia Industries Berhad*[2]:

"Section 237 is referable to Part 15 which deals with leases and tenancies and section 221 refers to leases granted by the proprietor of alienated land."

It would therefore seem clear that the only question to be decided in this appeal, which in my opinion has been correctly brought under section 418 of the Code, is whether it is open to this court to grant any relief against the order of forfeiture made by the Collector. From the wording of section 418 it would appear that the Bank itself as an aggrieved party has the right to appeal against the forfeiture because of the large sums of money advanced by it to the Company for the development of the land, although it would be difficult for it to make out a case for the annulment of the forfeiture merely on the ground that it had loaned money to develop the leased land.

The substantial ground of appeal is that the validity of any forfeiture order made by the Collector may be challenged in court by way of an appeal under section 418 brought by a person aggrieved. In this connection it is contended that the word "validity" may be interpreted as "validity in equity" as section 134 does not exclude the rules of equity under section 3(1) of the Civil Law Act, 1956, which have been applied by the Courts in Malaysia in various cases

involving the Torrens System including our National Land Code. Several authorities such as *Devi* v. *Francis,*[3] *Temenggong Securities Ltd. & Anor.* v. *Registrar of Titles Johore & Ors.,*[4] *Registrar of Titles Johore* v. *Temenggong Securities Ltd.,*[5] *Butler* v. *Fairclough,*[6] and *Abigail* v. *Lapin*[7] were cited in support of this contention. But I need only refer to *Wilkins & Ors.* v. *Kannammal & Anor.*[8] in which Taylor J. said:

"The Torrens Law is a system of conveyancing; it does not abrogate the principles of equity; it alters the application of particular rules of equity but only so far as necessary to achieve its own special objects."

The principles of equitable intervention by the court have been stated in a number of cases. In *Re Dixon Haynes* v. *Dixon,*[9] Rigby L.J. said:

"The Court of Chancery gave relief against the strictness of the common law in cases of penalty or forfeiture for non-payment of a fixed sum on a day certain, on the principle that the failure to pay principal on a certain day could be compensated sufficiently by payment of principal and interest with costs at a subsequent day."

In the more recent case of *Chandless-Chandless* v. *Nicholson*[10] Lord Greene M.R. said:

"The court, in exercising its jurisdiction to grant relief in cases of non-payment of rent is, of course, proceeding on the old principles of the court of equity which always regarded the condition of re-entry as being merely security for payment of the rent and gave relief if the landlord could get his rent."

In *Barton Thompson & Co. Ltd.* v. *Stapling Machines,*[11] it was held that, although relief against forfeiture was normally only granted in the case of lease of land, it was not plain and obvious as a matter of law that the court could not in certain circumstances, even in the absence of unconscionable behaviour, grant relief against forfeiture in the case of a lease of chattels.

In *Shiloh Spinners Ltd.* v. *Harding*[12] Lord Wilberforce (at page 100) said: —

"There cannot be any doubt that from the earliest times courts of equity have asserted the right to relieve against the forfeiture of property. The jurisdiction has not been confined to any particular type of case. The commonest instances concerned mortgages, giving rise to the equity of redemption, and leases, which commonly contained re-entry clauses; but other instances are found in relation to copyholds, or where the forfeiture was in the nature of a penalty. Although the principle is well established, there has undoubtedly been some fluctuation of authority as to the self-limitation to be imposed or accepted on this power. There has not been much difficulty as regards two heads of jurisdiction. First, where it is possible to state that the object of the transaction and of the insertion of the right to forfeit is essentially to secure the payment of money, equity has been willing to relieve on terms that the payment is made with interest, if appropriate, and also costs (*Peachy* v. *Duke of Somerset* and cases there cited.[13]) Yet even this head of relief has not been uncontested; Lord Eldon L.C. in his well known judgment in *Hill* v. *Barclay*[14] expressed his suspicion of it as a valid principle, pointing out, in an argument which surely has much force, that there may be cases where to oblige acceptance of a stipulated sum of money even with interest, at a date when receipt had lost its usefulness, might represent an unjust variation of what had been contracted for (see also *Reynolds* v. *Pitt*).[15] Secondly, there were the heads of fraud, accident, mistake or surprise always a ground for equity's intervention, the inclusion of which entailed the exclusion of mere inadvertence and a fortiori of wilful defaults."

After dealing with some contrary pronouncements his Lordship goes on to say at page 101:

"I would fully endorse this: it remains true today that equity expects men to carry out their bargains and will not let them buy their way out by unconvenanted payment. But it is consistent with these principles that we should reaffirm the right of courts of equity in appropriate and limited cases to relieve against forfeiture for breach of covenant or condition where the primary object of the bargain is to secure a stated result which can effectively be attained when the matter comes before the court, and where the forfeiture provision is added by way of security for the production of that result. The word 'appropriate' involves consideration of the conduct of the applicant for relief, in particular whether his default was wilful, of the gravity of the breaches, and of the disparity between the value of the property of which forfeiture is claimed as compared with the damage caused by the breach."

Having carefully considered the above authorities, I am of the view that in dealing with an appeal under section 418 of the National Land Code this court in the exercise of its inherent equitable jurisdiction has the power to grant relief against the forfeiture, notwithstanding the fact that the only provision in the National Land Code regarding relief against forfeiture is contained in section 237 which clearly is not applicable in the present case.

It has been submitted on behalf of the applicants that the forfeiture in this case was harsh and unconscionable for the following reasons which emerge from the undisputed facts in the case. The non-payment of rent was only for the year 1977. The Bank had not wilfully defaulted in paying the rent as it was under the mistaken belief that the rent had been paid by the Company. No hardship whatsoever would be caused to the Collector whose main interest is the collection of revenue, and he can be adequately compensated by the payment of rent due up to date together with such penalty as may be imposed. The setting aside of the order will be beneficial to the Bank, the Company and the shareholders, and it would also create employment opportunities for Malaysians and it would further be beneficial to the economy of the country.

I must say that there is a good deal of substance in the above submission. It is to be observed that when the land was leased to the sugar company it was secondary jungle. The Company is stated to have spent more than $18,000,000 for the development of the land in making it suitable for the cultivation and production of sugar in accordance with the terms of the lease. Between 1968 and 1977 the Company claims to have constructed 250 miles of roads, drains and bridges. Out of a total acreage of 20,680 an area of 17,500 acres has been de-forested and an area of 5,000 acres has been planted with sugar-cane. There is alleged to have been in existence at the time of the forfeiture two sets of machinery to process the sugar canes costing a total of $1,000,000 with a combined pressing capacity of 300 tons daily. The Company further claims that it had successfully cultivated ten species of sugar cane seedlings suitable for the climate, soil and rain conditions in Malaysia.

In all the circumstances of the case I am of the opinion that I should exercise a discretion in favour of the applicants by granting them the relief sought. I would therefore make an order that the forfeiture be set aside upon the Company paying within six months all the quit rent due and any money payable by way of penalty together with costs of the respondent.

Order accordingly.

Solicitors: *Allen & Gledhill; Cheang Lee & Ong.*